



STATE OF INDIANA
OFFICE OF THE ATTORNEY GENERAL

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STEVE CARTER
ATTORNEY GENERAL

TELEPHONE (317) 232-6201

June 13, 2007

Mark Massa, General Counsel
Office of the Governor
Statehouse, Room 206
Indianapolis, IN 46204

Dear Mark:

A few days ago, I met with you and provided our opinion regarding the specific statutory language of Indiana Code 10-14-3-13 as well as additional research into caselaw and judicial analysis of the general area of legislative grants of executive authority during emergency situations. This is a more formal response.

As you know, one of the limits on gubernatorial authority is statutory language enacted by the Indiana legislature. Indiana Code 10-14-3-13 contains both grants of authority and limitations of that authority. Regarding IC 10-14-3-5, we agree with your interpretation of the statute that it is clear that a suspension of a sales tax is not among those powers enumerated by this statute nor does it fall within the same category of those within the 1981 act that involve taking actions that should ultimately promote the restriction and conservation of energy. It is important for all public officials to recognize the limits of their authority. This is especially true with executive authority, where power is more concentrated than in our legislative and judicial branches of government. At the same time, our office remains ready to defend actions of the executive in times of crisis.

A review of cases in other states demonstrates that courts sometime adopt a broad reading on the use of emergency authority by the Governor to accomplish a legislative goal, particularly in protecting citizen's health and safety. No caselaw can be cited upholding the suspension of a tax by executive order under an energy emergency statute in response to rising fuel prices. Some might speculate that theories of legislative acquiescence or ones based upon other states' judicial decisions could be employed to defend executive decisions that appear to go beyond the language of a statute. But without further legislative action granting the Governor the authority to suspend the gas tax, we agree that this authority is not within the intent of the 1981 statute, IC 10-14-3-13. If you have any questions you may contact me at my office.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregory F. Zoeller".

Gregory F. Zoeller
Chief Deputy

GFZ:rb396574